LOS ANGELES BAR BULLETIN

In This Issue

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Los Angeles
BAR BULLETIN

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VOL. 26 OCTOBER, 1950 No. 2

THE PRESIDENT'S PAGE

THE LAWYER IN THE WORLD OF TODAY

Dana Latham

IN PAST WARS the lawyers of this community have served generously and ably. Their contribution has ranged from actual service in the Armed Forces to air raid warden duty.

All admit that today, save in name only, we are again at war. There are none who expect the lawyer to do less than before. As a matter of fact, because of the dark uncertainties which now face us under the Communist threat of aggression, the need for whole-hearted public service is greater than ever before.

What then can we, as lawyers, and our Association, as an organization, really do? There are a number of apparent courses of action. Many others will occur to those who read this page.

(1) Service in the Armed Forces on either a voluntary or involuntary basis is certain for a number of us. While there is little which the Association can do for those who make that sacrifice, it can, and already has voted through its Trustees to remit the dues of such persons while they are serving in our Armed Forces. While no official action has yet been taken by the Association's Trustees, dues also will doubtless be remitted for those who are serving their country away from Los Angeles in any other war position.

(2) During the past war a great public service was rendered by the lawyers of this community individually and through our Association in advising citizens called into

the Armed Forces with respect to their rights under the Soldiers and Sailors Relief Act.

In addition, a panel of Los Angeles Attorneys appeared in court without charge to protect the rights of members of the Armed Forces. The Association is presently preparing through its members to again render the vital services just mentioned. Doubtless many of you will be called upon to assist in this project. The Association is certain that you will respond generously.

(3) Bond drives will inevitably commence. The necessity for providing wholesome entertainment for our soldiers and sailors will again become imperative. We will all have to give the man in uniform a lift in our automobile.

REAL LEADERSHIP IN THOUGHT NOW IMPERATIVE

But the lawyers' real role in this critical period should and must be leadership in thought. Every day the nature of our peril becomes more apparent.

Too few of us will even attempt to analyze our world of today. The lawyers of this community have a solemn duty of leadership in times like these. This involves the sorting of the wheat from the chaff, together with a refusal to speak or act intemperately. Above all, it requires a determination to "stand up and be counted" where issues of great public moment are involved. And there must be no defeatist approach. That is to say, no blind acceptance of any theory that we can do nothing with respect to the various problems that arise.

If there ever was a time when the lawyers of this community and this nation had an opportunity to assume leadership, it is now.

DANA LATHAM.

Preparation is under way for the annual Christmas Jinks scheduled for Friday Evening, December 15, 1950 at the Los Angeles Breakfast Club.

The Jinks Committee will welcome any suggestions for specialty numbers or acts. Members with Thespian leanings or singing or musical talent are invited to make themselves known. While the number of actors and participants is necessarily limited, the endeavor will be to include many consistent with a sparkling, fast-moving show.

Suggestions by letter or telephone are welcome and should be in the hands of Gus Mack, Chairman of the Jinks Committee, not later than Friday, October 20, 1950.

POLITICAL CAMPAIGNING BY RADIO AND TELEVISION

By Bryan S. Moore*

THE promise of interesting, forceful campaigns preceding this November's elections and the growing use, by candidates for almost every public office, of radio and television, raise legal questions for candidates and broadcasters alike. The most informative approach to those questions is perhaps from the broadcaster's point of view.

The owner of a radio or a television station operates it on what may be a very insecure basis. This is because he is licensed to operate his station by the Federal Communications Commission and that license must be renewed every three years, under provisions of the Federal Communications Act.[1] The licensee, then, lives in triennial fear of losing his investment (usually large) if he doesn't comply with established license requirements. He must obey the law, meet rigid engineering standards and operate his station "in the public interest, convenience or necessity."[2]

Thus at the outset it will be observed that the broadcaster, to a certain extent, at least, is operating "on borrowed time." The terms of the loan are strict and the collateral at stake is dear. A realization of those facts may make the problems here considered more understandable.

THE BASIC STATUTE

The basic provision regarding political broadcasts is contained in Section 315 of the Act:

> "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasing station, and the Commission shall make rules and regulations to carry this provision into effect: Pro-

*Mr. Moore of the Los Angeles bar graduated from Stanford in 1937 and received an L.L.B. from Harvard Law School in 1940. Since completion of his Navy duty in January, 1946, Mr. Moore has been associated with the firm of Lillick, Geary and McHose. After January 1949, he has devoted most of his time to the affairs of the American Broadcasting Company, serving as its Pacific Coast counsel. He is a member of our Association.

[1]The Communications Act of 1934, 47 U.S.C., Sections 151-609, particularly Section 307(d).

[2]The Act provides that if, upon application for a license or a renewal or modification thereof, the FCC determines "that public interest, convenience or necessity would be served by the granting thereof, it shall authorize", etc. or else shall set the matter for hearing.

vided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."[3]

The first thing to note about Section 315 is that the obligation which it imposes upon licensees is subject to a condition precedent. To make sure the introductory "if" would not be overlooked, Congress added the last reassuring sentence that "no obligation is hereby imposed . . .".

Another point to note is the phrase "other such candidate *for that office.*" The obligation is not only conditional, but is limited as well. Thus if a local station gives a Republican candidate for senator time to air his views during the campaign, that station need not give equal opportunities to a Democratic candidate for assemblyman. Or, if the Democratic candidate for the Assembly from the 5th District be allowed to use the station, the Republican candidate for the Assembly from the 6th District need not be afforded equal opportunities. A similar distinction would apply to a primary as compared with a general election.[4]

If the condition precedent to the application of Section 315 has been fulfilled—that is, a legally qualified candidate has been permitted to use a station's facilities—it becomes pertinent to inquire who else may take advantage of the provisions of Section 315 and exactly what is he entitled to receive under those provisions.

The question of identity is sometimes difficult to answer. Those persons entitled to protection are the political rivals of the candidate who has used the station and each must be, in the words of the statute "a legally qualified candidate . . . for that office."

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[3]The Communications Act was passed in 1934, before television was in commercial use in this country. The FCC, however, has issued rules regarding political broadcasts for both television and FM stations substantially identical to those issued for regular (AM) commercial radio stations. It would seem therefore that the principles herein discussed are applicable to FM and television broadcasting as well as to commercial AM broadcasting.

[4]These would seem valid conclusions from a reading of section 315 itself, but there still remains the duty of the broadcaster to observe considerations of "public interest, convenience, or necessity," and in *Sam Morris,* 4 Pike & Fischer R.R. 885, the Commission by letter stated that although a primary election should be considered as independent of a general election under Section 315, it went on to suggest that, without regard to that section, "elementary principles of fairness may dictate that a station which has afforded considerable time during the primary to candidates for nomination . . . should make a reasonable amount of time available to candidates for that office in the general election."

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Date Line A. D. 2000, or What Will Happen to

THE PRACTICE OF LAW IN THE NEXT FIFTY YEARS? (Part II)

By George Harnagel, Jr.*

EDITOR'S NOTE: *In the year 2,000 the Bulletin will publish a survey of the progress of the law and its practice during the second half of the twentieth century. For the convenience of a number of our subscribers who may not be readily available at that time, the Bulletin is publishing preliminary drafts of portions of that survey. "The Superior Court," "Probate Practice" and "Tax Practice" appeared in the August issue. "Personal Injury Practice," "The Regulation of Business" and "Constitutional Law" are submitted below. The series will be concluded in an early issue with "The Law Student" and "The Lawyer."*

It will be understood that each of these drafts speaks as of the year 2,000. Hence, although they deal with developments during the next fifty years, they do not do so as prophecy but much more reliably as history.

PERSONAL INJURY PRACTICE

George Harnagel, Jr.

WITH EVERY conceivable risk now covered by insurance, much of it written by the state, the defense of all personal injury cases has been increasingly concentrated in the hands of a comparatively few specialists. The plaintiff's side is still wide open, relatively speaking, but there has been a drastic over-all decline in personal injury litigation.

For many years the backbone of this business was the automobile. It looked for a while during the seventies and early eighties that automobile accident litigation would be absorbed by a state Automobile Accident Commission similar to the Industrial Accident Commission. But something much worse happened—auto accidents were virtually eliminated by the development of the inverto-magnetic peripheral bumper. This and other safety devices have not only diminished the available business in this field but have also had an unfortunate impact upon the probate lawyer's field as well.

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*Of the Los Angeles Bar. For a brief biographical sketch of Mr. Harnagel, see 25 L.A. Bar Bulletin 386 (August 1950).

The airplane never developed into the legal bonanza that the automobile once provided. Before its use became general automatic anti-collision devices, built in vehicular parachutes, anti-gravitational brakes and other safety apparatus had been installed which practically eliminated accidents, and if not accidents, resultant damage of consequence.

The personal injury bar experienced a temporary boom that began in the middle fifties, and lasted for fifteen years or more. This occurred when radioactive materials outgrew the laboratory stage and passed into general use in industry, first for testing materials, then for the dissipation of electrostatic charges resulting from various manufacturing processes, and finally for a wide variety of purposes. While it was generally known at the time that exposure to many types of radiation might cause serious injury unless properly controlled within safe limits, the tolerance levels generally observed at the time were based on imperfect data and proved to be much too high.

Compensation insurance claims skyrocketed and compensation insurance rates followed in their wake, but not soon enough to save the solvency of many insurance carriers. At the time exposure to alpha, beta and gamma radiations was, practically speaking, impossible for the individual to detect and control, as they invoke no sensory stimuli and resulting injuries may not become evident for months or even years. Hence the insurers found themselves suddenly faced with an avalanche of claims without having built up adequate reserves.

Of course a corresponding avalanche of employee suits were filed for heavy damages additional to the workmen's compensation payments. When filed against the employer they were based on charges of gross negligence, failure to adopt prescribed safety regulations or some other ground designed to take the case outside the provisions of the particular workmen's compensation act in question. Most of the early cases of this kind failed because the Industrial Accident Commissions of most of the states themselves underestimated the dangers involved in exposure to radioactive substances.

In nearly every instance the employee or his next of kin also filed a third party suit against the supplier of the radio-

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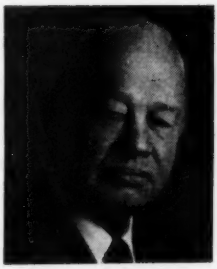
A PREVIEW OF BAJI'S 1950 SUPPLEMENT*

By Oscar O. Collins**



Oscar O. Collins

MORE than a decade ago, the Los Angeles Bar Bulletin carried a series of articles by William J. Palmer, Judge of the Superior Court, under the running title, "Leaves from a Judge's Notebook." One paragraph in one of those articles was devoted to pointing out the extravagant, but then necessary, duplication of labor and the incalculable economic waste that resulted from the fact that we had no commonly accepted standards or guides for the preparation of jury instructions; that the average lawyer not representing insurance companies had to start virtually from scratch when preparing instructions for a jury trial; that doing so usually was a labor of two or three days or more; and that the trial judge in a jury case often had to work for hours with a chaotic mass of instructions, usually replete with prejudice, repetition, inaccurate and incomplete statements of law, ungrammatical constructions, and heavily laden with possibilities for new trials, appeals and reversals. The author pointed out how that state of affairs could be, to a worth-while extent, ameliorated.

TWO FAR-REACHING ASSIGNMENTS

One, at least, of his associates on the bench read the article and when that associate, Fletcher Bowron, now Mayor of Los Angeles, became presiding judge, he appointed Judge Palmer to the task of directing, as editor-in-chief, the production of a file and book of jury instructions for civil cases that might serve as a guide and an aid to lawyers and judges. With the aid of a committee of judges of the court and lawyers representing the Los Angeles Bar Association, Judge Palmer carried the project into reality, the work being published under the title, "California Jury Instructions, Civil," and commonly referred to as BAJI (Book of Approved Jury Instructions).

*Published by West Publishing Company.

**Mr. Collins was admitted to practise in 1915. Since 1925 he has been active on behalf of the Pacific Electric Railway and the Southern Pacific Company and is now head of the trial department for this area. He is a member of our Association.

"Those associated with Judge Palmer in that pioneering project were Judges Harry R. Archbald, and Henry M. Willis of the Superior Court and Attorneys Allen W. Ashburn, Paul Nourse, Elmer H. V. Hoffman and Oscar O. Collins, representing the Los Angeles Bar Association, and Attorney Bertin A. Weyl, since deceased, representing the Lawyers Club of Los Angeles County."

The success of the project as a practical aid to the profession soon was evident, and, because of it, another presiding judge, Walter Desmond, later elevated to the District Court of Appeal, assigned Judge Palmer, as editor-in-chief, to direct the accomplishment of the same kind of service for lawyers and judges engaged in the practice and administration of criminal law. That assignment, too, was carried to completion, and the work was published under the title, "California Jury Instructions, Criminal", nicknamed CALJIC.

"Those associated with Judge Palmer in that project were Judges Charles W. Fricke, Frank C. Collier, since deceased, Thomas L. Ambrose, Frank G. Swain and William R. McKay of the Superior Court; District Attorneys in order, John F. Dockweiler, since deceased, and Fred N. Howser, both actively represented by Jere J. Sullivan of that office; Frederic H. Vercoe, then Public Defender of Los Angeles County; and the Los Angeles staff of the Attorney General of California, then Robert Walker Kenny, represented actively by Gavin W. Craig, since deceased, under a temporary assignment for the purpose."

INERTIA AND OTHER OBSTACLES

It is quite impossible for one who had no intimate association with either of those undertakings, and who now sees the finished products with their cleanly stated, logically analyzed and effectively organized material, to visualize the problems of the venture, the mountains of inertia, the opposition, skepticism, the bad examples, and the eddies of confusion that had to be driven through or overcome. It has been my own responsibility, as a representative of the Los Angeles Bar Association, to work with Judge Palmer and the committee on the that work, soon to be off the press. First, however, let me conclude my statement concerning the history of the project.

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PRACTICAL LAW TRAINING

If you have a young friend taking the October 1950 bar examination, the Editors feel you have an obligation to tell him of the two-day course that will be given at U.S.C. Law School on October 23 and 24, 1950. It has been announced that the program is open, without charge, to all persons who take the October 1950 Bar Examination, without regard to the law school they attended. The course will seek to cover "bread and butter" aspects of law practice, the sort of material not found within the usual law school curriculum, i.e. trial practice in California, law office management, fields of law specialization. Harvard is the only other law school in the United States that appears to have undertaken to cover such practical problems.

Judge Harold W. Schweitzer of the Municipal Court, Chairman of the U.S.C. Law Alumni Association committee sponsoring the program, advises that certain Judges and many outstanding practictioners in our Association will participate as speakers. Again we respectfully suggest that you inform your young friends of this opportunity.—J. L. M.

RESOLUTION APPROVING PROPOSED STRUCTURE OF INFERIOR COURTS

WHEREAS, the lower courts of the State of California have, because of their limited jurisdiction, become inadequate for the efficient administration of justice; and

WHEREAS, the number and classes of lower courts have, in many parts of the State, resulted in overlapping jurisdiction and have caused confusion; and

WHEREAS, the present complexity of the State's social, economic, and political problems, resulting from a great increase in population, requires a better balanced and more efficient system of lower courts; and

WHEREAS, it is the considered opinion of this Board of Trustees that Proposition No. 3 on the November, 1950, ballot will, if adopted, provide a more efficient system of lower courts and will substantially improve the administration of justice in California.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Trustees of Los Angeles Bar Association hereby endorses Proposition No. 3 on the November, 1950, ballot and urges all citizens of the State of California to support it in the interest of a simple, efficient and economic court system for California.

BE IT FURTHER RESOLVED: That a copy of this resolution be sent to the State Bar of California and that the resolution be published in the Los Angeles Bar Bulletin.

THE CITY ATTORNEYS OF LOS ANGELES

By Leon Thomas David*

VIII

Into the International Scene: The Chinese Massacre and the Fight For the Harbor.

Leon Thomas David

LOS ANGELES made the international limelight in sensational fashion in 1871. One October day, twenty-two or more Chinamen were seized, beaten and hung near Los Angeles and Commercial Streets by an infuriated mob of over a thousand persons, which surrounded Nigger Alley, bashed in roofs, and engaged in a frenzied orgy of lawlessness.

It had started with a tong war between Chinese, excited over abduction of a woman, and flared high when wrathful San Francisco Chinese arrived as reinforcements.

City policeman, Jesus Bilderrain, with a group of citizens sought to break up the tong war disorders and tried to arrest armed tong members. Bilderrain and his brother were shot, and Robert Thompson, who assisted them, was shot and killed.[1]

A mob quickly formed as the news spread. Sheriff Burns sought to form a posse to handle the riot and demanded that it disperse but no one responded.

Andrew J. King, undersheriff and later City Attorney, in rushing to arm himself, shot off the tip of his finger. Henry Hazard—another who served as City Attorney—stood on a barrel to harangue the crowd. Friends rescued him also from the enthusiastic lynchers. Judge R. M. Widney, and Cameron Thom—another who later was City Attorney and Mayor—tried to quell the riot and did succeed in rescuing some of the Orientals. Thom mounted a barrel and harangued the crowd, and so did Sheriff Burns. Harris Newmark, eye witness, tells how the barrel collapsed under Burns, ending his speech ludicrously.

The verdict of the Coroner's Jury was ludicrous, also, finding the victims met death by strangulation at the hands of parties unknown.

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*Of the Los Angeles Bar. For a brief biographical sketch of Mr. David, see 25 L. A. Bar Bulletin, 226 (April, 1950).

[1]An account of the episode is given in Wing Chung v. Los Angeles, 47 Cal. 531, 532-3.

But there were meetings all over the nation, protesting the indignity. The Chinese Ambassador made serious matter of the episode and indemnity was paid by the United States government.

City Attorney F. H. Howard, O'Melveny and W. T. Hazard, then had to defend suits brought against the City under the unique statute (Statutes 1867-8, p. 418) making cities responsible for damage done by mobs and riots. The claim of the Chinese for injury to their property was defeated on the ground they failed to notify the Mayor of the impending riot and that their conduct had precipitated it.[2]

NEW ERA

The attention of the citizenry was diverted to other matters. The bandit, Vasquez, operated between Bakersfield and here, was captured, taken on a change of venue to San Jose, tried and executed.

In a shaft, sunk by pick and shovel, E. L. Doheny found oil—A New Era had commenced.

Electric lighting came to Los Angeles in December, 1882. The telephone was contemporaneous. In 1885 the first cable railway began operations, and the Santa Fe reached the city. Thereupon began a rate war. Round trip tickets from the midwest went down to fifteen dollars, then a dollar, and tourists began to pour into Los Angeles in a stream which has not stopped yet.

Legal notables passed by. Erskine Ross, nephew of City Attorney, C. E. Thom, was elected in 1879 to the State Supreme Court, and in the late eighties, Ross and Stephen J. Field sat here in the United States Circuit Court, holding sessions over the Farmers and Merchants Bank at Main and Commercial Streets.

The boom was on. In 1888 the project for a separate state received momentary attention. It was determined to be a necessity but "the time is not ripe."

In 1889, the first Tournament of Roses was staged.

Such material developments called for civic expansion. There were dreamers who saw Los Angeles as the capital of the Western Sea with argosies coming and going from the four corners of the earth.

The long fight for federal appropriations and Congressional approval, involved civic organizations, lawyers and local officials

[2] *Wing Chung* v. *Los Angeles*, 47 Cal. 531, 535. Thereafter, the mobs and riot statute was to lay dormant for three generations until invoked in reference to another riot over foreigners. (*Agudo* v. *Monterey County*, 13 Cal. (2d) 285, 80 P. (2d) 400.)

for a generation. Charles H. McFarland, Wm. E. Dunn, Walter F. Haas, William B. Matthews and Leslie Hewitt as City Attorneys from 1888 to 1910 profoundly influenced the course of this municipal development.

H. T. Hazard, ex-City Attorney and Mayor 1889 and 1892 actively began the free harbor campaign.[3]

From 1850 until 1870, goods and passengers were lightered ashore to San Pedro and Wilmington. Terminal Island was a thin wraith of sand called Rattlesnake Island. The inshore channel, where there was one, had a maximum depth of 17 feet. In 1881 a jetty was completed to prevent the small channel from filling up, and reclamation of Terminal Island commenced. Following these improvements Wilmington was regarded as the main harbor.

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[3]Mr. H. T. Hazard was a member of the firm of Hazard and Gage. Gage later became Governor of California. They had an office in the Downey block on Temple Street. Hazard succeeded John Bryson as Mayor in 1888, being elected at a special election held under the new Charter.

Hazard was a member of the first Park Commission, appointed in 1888. During his second term as Mayor in 1892 Doheny discovered oil in Los Angeles. Vigorous Council action was necessary to prevent the spread of oil drilling to the Westlake Park region. In 1894 Hazard was a member of the Fiesta Committee. In 1899, upon the successful conclusion of the fight for the Los Angeles harbor, Hazard made the presentation speech at a ceremony in which a plaque was awarded the Los Angeles Times for its support of the fight. H. T. Hazard died in 1921.

Billy Dunn was known to many lawyers. He was the Dunn of Gibson, Dunn and Crutcher. He studied law at the University of Michigan. As Assistant City Attorney and City Attorney, he won his first fame in the suits over the purchase by the City of the Los Angeles Water Company. In 1898 he became the city's special counsel in water litigation; he became counsel later for the Huntington and other utility interests.

Walter F. Haas, who later resided at Alhambra, became a member of Haas & Dunnigan; and was regarded as an authority on water law, derived in good measure from his municipal experience in helping set up the Los Angeles City system.

William B. Matthews as City Attorney (1900-1906), and later special counsel for the City in water and power matters is regarded affectionately as one of the fathers of Los Angeles' highly successful utility system, and served as well on the Library Board.

Congress, in 1890, caused a Board to be appointed to examine this locality and to report on the best location for a deep water harbor. It reported in favor of San Pedro, but in 1892 another board was constituted. Santa Monica Bay was the competitor and rival railroads fanned the fires concerning the ultimate selection. The second board reported for San Pedro, but the report gathered dust in the Halls of Congress. In 1896. a third board reported but a bill was introduced in Congress to build a $2,900,000 seawall at Santa Monica.

The contest was long and bitter. C. P. Huntington and his associates were the adversaries. Huntington had established Port Los Angeles, northwest of Santa Monica, and built the long wharf —six thousand six hundred feet long. He also controlled the entire ocean frontage. The threat of such a monopoly did much to crystalize sentiment against such a development. Stephen M. White, United States Senator, led the fight in the Senate. The victory for San Pedro was the beginning of the decline of the railroad political machine in California, reaching a climax in 1911, the real beginning of the development of our municipal harbor department for all the people.

Even after the Harbor Victory was won, two years more were consumed in forcing the Secretary of War to call for bids for the first ocean breakwater, completed in 1907. Thirty years later, the Federal government, at the instance of the Navy, sought to condemn the major part of Terminal Island ocean frontage for naval uses, alleging ownership by the United States. This was after the Congress, through the War Department, had spent millions to develop the commercial harbor. After two years of preparation for trial and negotiations in which it was clear that such an action would damage the city some $22,000,000 on account of loss of its investment and necessary relocations, the suit was dismissed.[1]

This was a prelude to United States v. California, whose repercussions have not yet died down in Congress.

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[1]U.S. Dist. Court, U.S. v. 338.6 acres of Land #1102-B Civil.

EDITOR'S NOTE: *City Attorney Ray L. Chesebro, Assistant City Attorney Arthur Nordstrom, and Mr. David, Special Counsel for the Harbor Department, the author of this article, were successful in securing a dismissal. The printed answer filed is perhaps the most complete documentary history of Los Angeles Harbor ever prepared.*

Hon. Earl Warren, as Attorney General, and L. G. Campbell and R. S. McLaughlin, of his staff, appeared to defend the trust in the State of California for commerce, navigation and fishery.

Silver Memories

Compiled from the Daily Journal of September and October, 1925
By A. Stevens Halsted, Jr., Associate Editor

A. Stevens Halsted, Jr.

AT THE 16th annual California Bar Association convention held at Lake Tahoe in September, Hon. **Charles A. Shurtleff** of San Francisco, formerly of the State Supreme Court bench, was elected President. **Thomas C. Ridgway** of Los Angeles was elected a Vice-President. The other Vice-Presidents elected were **Charles A. Beardsley** of Oakland and **Lewis H. Smith. Delger Trowbridge** of San Francisco was elected Treasurer and **T. W. Robinson** of Los Angeles was re-elected Secretary. **Leonard B. Slosson** of Los Angeles was chosen as one of five members of the Executive Committee. President **George F. McNoble** of Stockton presided over the convention.

* * *

John Perry Wood, Judge of the Los Angeles County Superior Court for the past fifteen years, is resigning from the bench to enter private practice. Judge Wood will form a partnership with **Edgar G. Pratt** and **G. Harold Janeway.** Judge Wood is the third oldest judge in service on the bench, Judges **Monroe** and **Willis** being the only two who have served longer. He is a graduate of Dickinson College and of Yale Law School, having come to California in 1902. Prior to his election to the bench in 1910, Judge Wood was City Attorney of Pasadena.

* * *

William M. Bowen has been appointed Chief Counsel of the Twenty-Second Federal Prohibition District. For twenty-six

years Mr. Bowen has been a member of the law firm of **Scarborough & Bowen.** He served on the City Council from 1901 to 1904, was five and a half years a member of the Park Commission and is known as the "Father of Exposition Park". The office to which Mr. Bowen is named is a new one in prohibition enforcement, and is designed to take much detail work from the shoulders of the United States attorneys.

* * *

P. E. Keeler, President of the Long Beach Bar Association, has been appointed Superior Court Judge by Governor Richardson to succeed Judge **John Perry Wood.** Judge **Harry Hollzer** is now presiding over the Long Beach Department of the Court, but it is likely that Judge Keeler will succeed Judge Hollzer and hold Court in his home town.

* * *

As part of the celebration of the 150th anniversary of the founding of the United States Navy, three naval aviators will relate their experiences in different fields—Commander **John Rodgers,** in charge of the recent great Hawaiian flight; Lieutenant-Commander **Charles E. Rosendahl,** senior survivor of the recent crash of the dirigible Shenandoah, and Lieutenant-Commander **Richard E. Byrd, Jr.** of the MacMillan Arctic expedition.

* * *

Dr. Nicholas Zemashko, Soviet Commisar of Health in Moscow, has issued an edict against kissing which he contends, is one of the most potent means of spreading disease. The order, if observed, will fall hard upon the Russian peasantry, who are in the habit of kissing one another, not only on the lips, but three times on each cheek in salutation. Dr. Zemashko is also opposed to the kissing of ladies' hands by men, a national custom in Russia. Handshaking has also been prohibited in many departments of the government. The conventional military salute, hand from forehead, is suggested as a greeting less apt to communicate disease.

LANGUAGE FROM THE SUPREME COURT

Mr. Justice Frankfurter, dissenting in the case of *N.L.R.B. v. Mexia Textile Mills* (May 15, 1950) said:

> "One does not have to be an easy generalizer of national characteristics to believe that litigiousness is one of our besetting sins. A relaxed observance of the considerations that supposedly govern our certiorari jurisdiction is not calculated to discourage litigiousness.
>
> Equally undesirable is the effect, however insidious upon Courts of Appeals. If, barring only exceptional cases, they are to be deemed final courts of appeals, consciousness of such responsibility will elicit in them, assuming they are manned by judges fit for their tasks, the qualities appropriate for such responsibility. Contrariwise, encouragement in regarding Courts of Appeals merely as way-stations to this Court is bound to have a weakening effect on the administration of tribunals whose authority and qualities we should be alert to promote."—J.L.M.

OPINION OF THE COMMITTEE ON LEGAL ETHICS, LOS ANGELES BAR ASSOCIATION

OPINION NO. 173

LETTERHEADS: It is improper for an attorney who is the attorney for a lay association to allow his name to appear on the letterhead of the association under the caption, "Attorney for the Guild."

A member of the bar has submitted the question to this Committee as to whether it is proper for an attorney to allow his name to be used on a letterhead of an association in the following manner:

JOHN DOE'S GUILD
42756 Roe Street,
Los Angeles, California

Directors:	**Attorney for the Guild**
John Doe	RICHARD ROE
Wm. Roe	1435 E. 8th St.
	Los Angeles, California

A similar matter to this was decided by the Los Angeles Bar Association Committee on Legal Ethics, October 6, 1927, being Opinion 43. Although this Opinion and the question propounded deal with a collection agency, yet the Committee said, "An attorney may not, with professional propriety, permit a corporation, trade organization, or collection agency, represented by him to advertise his employment as such counsel in newspapers, circulars, or upon their letterheads."

In Opinion 164 of this Committee, dated February 19, 1947, it was stated that it was not ethical for an attorney to allow his name to appear as Tax Counsel on the stationery of an accountant.

Canons 27 and 35 of the American Bar Association are involved in this matter. Canon 27 prohibits indirect advertising in any manner, and Canon 35, while permitting an attorney to represent an organization such as a club or trade association, does not permit the attorney to render services to the members of such organizations in respect to their individual affairs.

The use of the attorney's name on the association's letterhead may invite violation of Canon 35, and it would constitute a form of indirect advertising by the attorney which is forbidden by Canon 27.

We conclude that the attorney should not permit his name to be used on the letterhead.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Article VIII, Section 3.)

Brothers-In-Law

And What They Are Doing in OTHER BAR ASSOCIATIONS

By George Harnagel, Jr., Associate Editor

The Bar Association of the City of **New York** has taken the position that the Uniform Commercial Code should not be finally approved by the American Law Institute without further study by bar associations and commercial groups. A similar stand has been recommended by a Committee of the **Chicago** Bar Association.

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Nevada has only 255 lawyers; **New York**, 28,333.

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The **Chicago** Bar Association annually conducts a bowling league with approximately 120 attorneys and judges participating. Could members of our association unbend (or just plain bend) sufficiently to do the same?

Bowling, incidentally, has a certain claim to be a lawyers' game. Somewhere I've read that when a law was enacted in New Amsterdam prohibiting "nine pins" as it was then known, the Dutch bowlers neatly circumvented the statute by adding a tenth pin, and thus through a little legal ingenuity the modern game was developed.

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The Executive (Board of Trustees to us) of the **Victoria, B. C.** Bar Association has adopted "the very pleasant practice of meeting in the evenings at the homes of (its) members . . . because it brings an extremely friendly atmosphere in which business is discussed."

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The action of The Benchers of the Law Society of **British Columbia** in refusing the application of a communist, because he was a communist, "for call to the Bar and admission as a Solicitor of the Supreme Court of this Province" has been unanimously sustained by that court.

PRACTISE OF THE LAW IN 2000 A.D.

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active substance, charging breach of a duty to inform the employer of the dangers inherent in the substance supplied and many of these suits were successful.

Many other suits grew out of improper disposal of radioactive wastes and contamination of areas surrounding plants where radioactive substances were used. New theories of trespass were evolved and the doctrine of **Rylands v. Fletcher** had a tremendous vogue.

The damages claimed were heavy in every case and in the aggregate nothing less than astronomical. This is not surprising when it is recalled that over-exposure to various forms of radiation resulted in leukopenia (decrease in number of white blood cells), leukemia (excessive number of white blood cells), sterility, cancer, bone destruction, loss of hair and vision, and even death. Furthermore, when surrounding areas were rendered uninhabitable by the improper use of radioactive substances, or where a source of public water supply was con-

taminated, it is easy to see how damage claims could be staggering.

Unfortunately for the legal profession, but happily for the human race, all this is a thing of the past.

First came greater safety measures and a rash of warning devices. There was first the simplified pocket Geiger counter, shaped and carried like a fountain pen, which let out a whistle in the presence of radiation additional to that of the cosmic rays to which, of course, the human race has always been exposed. These were distributed free of charge by the federal government to everybody in the country.

Next came various olfactory detection devices which emitted the odor of cloves in the presence of alpha particles, licorice in the presence of beta particles, limburger cheese in the presence of gamma particles, and so on.

Finally came the discovery and ultimate sythenization of antiradiomycin, which won the Nobel prize for a group of international scientists in 1975. A few c.c. sprayed into the atmosphere at regular intervals from ten internationally maintained antiradiation stations now effectively neutralize the deleterious effects of radiation of all types on all forms of animal and vegetable life.

And with that the personal injury bar had to settle back to an occasional defective stepladder.

THE REGULATION OF BUSINESS

Circa 1930 an old grad is supposed to have written a letter to the President of Yale in which he lamented that "the old school wasn't what it used to be." To which the president is supposed to have replied: "No, and it never was."

Those business men of 2000 who long for "the good old days of free enterprise," probably don't know what they are talking about.

Historical studies of legislation current in 1950 disclose that business was not only regulated then, but beset by confusing and contradictory regulations.

The philosophy behind one group of statutes appears to have been that it was reprehensible to make money, another that it was reprehensible to lose money. According to the first, anything resembling price stabilization was illegal, in fact criminal. According to the latter, outright price fixing agree-

ments were all right if they operated vertically rather than horizontally and the courts could be invoked to enjoin price-cutting or other competitive activity. One group of laws discouraged any attempt to keep prices up. Another made it an offense to sell at low prices.

Compared with his predecessor of fifty years ago, we think the American business man of 2000 has things rather easy. True, he is regulated up to and beyond the hilt, but at least he knows what is expected of him.

For many years the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and a hodgepodge of other somewhat interrelated federal statutes aimed at the regulation of business were attacked as inadequate. As long ago as 1950 Emanuel Celler, then the Chairman of the House Committee on the Judiciary, had called them "horse and buggy statutes applied to an automotive and jet-propelled era."[1] Despite this nothing much was done about them, except to add a few more confusing amendments here and there until 1980 when the whole mess was superseded by a simple but comprehensive statute, the Anti-Business Code.

The Anti-Business Code established a commission known as the Anti-Business Commission. It is composed of seven commissioners as follows: One, the Secretary of the Treasury; two, the Secretary of Labor; three, the President of the A. F. of L.; four, the President of the C.I.O.; five, the President of the American Society of University Professors; and six, the President of the American Federation of Women's Clubs. The seventh member must be a business man of not less than two years experience selected, when they can unanimously agree, by the other six.

The Commission fixes annually, through a staff of several million economists, analysts, examiners, accountants and other experts, the net profit before income taxes which each business enterprise in the country is allowed to make, thus removing the uncertainty that existed under the prior contradictory legislation. A business which makes its quota is awarded an "E" for excellence upon payment of its income tax for the year

[1]From an address before the Section on Antitrust Law, New York State Bar Association.

plus a nominal charge to cover packing and postage. A business which does not make its quota is subject to fine for income tax dodging. And one which makes more than its quota is subject to an excess profits tax ranging from 99% to 110% of its over-quota earnings.

This works out very well. The Government is assured of substantial revenues at all times—in the form of fines during periods of depression, and of high taxes during periods of prosperity. Why this simple but effective device was not adopted long before will always be a mystery.

CONSTITUTIONAL LAW

Not long after the federal Anti-Business Commission was established another incomparable boon was conferred upon the American business man, this time by the Supreme Court. He was relieved of a problem that had vexed him, in one form or another, for over two hundred years—the extent of the power of the national government under the interstate commerce clause—and at the same time the American lawyer was also relieved of a substantial part of his practice.

It has been pretty well forgotten, even among lawyers, that a little over hundred years ago the Supreme Court, in one of the first important suits instituted under the former Sherman Antitrust Act[1], held that manufacturing, even manufacturing for commerce, was not commerce; and hence that it was not within the reach of the commerce clause. Of course that quaint notion was soon bypassed[2] and it has been recognized for many years that the commerce clause empowers Congress not merely to regulate interstate commerce as such, but to extend its control over a variety of things that are said to "affect" interstate commerce or to "burden" it. Indeed much of the pioneer federal labor legislation of the thirties and forties was justified constitutionally on the ground that it dealt with a subject matter which "affected" interstate commerce.

For a while it was fancied that the "burden" or "affect" had to be substantial, and this was productive of much litigation. It was eventually admitted, however, that the requirement of substantiality was sheer judicial legislation.

[1]*The Sugar Trust Case, U.S. v. E. C. Knight Co.*, (1895) 156 U.S. 1, 15 S.Ct. 249.
[2]See *Swift and Company v. U.S.* (1905) 196 U.S. 375, 25 S.Ct. 276.

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The watershed case was

Willie Muggins v. Old Dr. Killdare
550 U.S. 1, 118 S.Ct. 829 (1985)

The defendant, Killdare, was a retired physician who lived near the State Hospital for the Insane at Camarillo, California. He occasionally called on professional friends at the hospital and once in a while had them over for a game of bridge. The plaintiff, Muggins, was a youth of fifteen who had left school after four years in the fourth grade and who did odd jobs around the community to supplement his semimonthly check from the State Compensation Fund for Unemployables.

Old Dr. Killdare out of the goodness of his hypertensive heart and because Willie reminded him of a producer he had once worked for in Hollywood, hired the youth now and then to cut his lawn, paying him $6.00 for the job. For most people it would have taken about an hour, for which the minimum pay under the Federal Labor Standards Act would be $3.00; but, according to the undisputed testimony, it usually took Willie just under two hours.

One day, however, it took Willie three hours because it was a hot day and he lay down in the shade and took a nap when he was about half done with it. The good doctor nevertheless paid him only $6.00 or $3.00 less than the minimum lawful rate for three hours of work; and, after surveying the job, he felt as usual that he was performing an act of charity. As a matter of fact he didn't know that Willie had taken a nap and he testified before the examiner that, had he known it, he would have supposed that he could deduct Willie's sleeping time when making payment. Which just goes to show that he wasn't familiar with Order No. FX 4748.31(a) which as long ago as ten o'clock that very morning had been issued in Washington by the Infants and Minors Wing, Occasional Out Servant Subsection of the Domestic Service Section of the Wage and Hour Division of the Labor Standards Bureau of the Anti-Business Commission.

Willie himself had been quite happy and had no complaint, but it happened that Old Dr. Killdare's nephew was visiting him at the time and was aware of the transaction. Unfortunately for the good doctor his nephew was a law student at Yale and he turned the old man in.

Astute counsel recognized of course that neither ignorance of the facts nor of the law or both excused the doctor's act and that the doctor's defense must be based on the contention that the federal government was without power under the commerce clause to regulate Willie's wages for the particular employment involved. Defense counsel's argument was rather plausible. Whether Willie got $3.00 an hour for cutting Killdare's lawn or $2.00 an hour or nothing, he said, could in no way affect, burden or impinge upon interstate commerce. Indeed, he thought it was a matter of indifference whether Killdare's lawn was cut or not, as far as the economy of the nation was concerned.

The Court, speaking through Mr. Justice Whitestone, thought differently. It pointed out the depressing effect of substandard wages paid by one employer upon wages generally. It was patent, it said, that any payment of less than the minimum wage, decreased purchasing power that much and that the flow of commerce was bound to be affected, if not by a single instance of such dereliction, then by similar derelictions which it would by its example encourage. It was reasonable to assume, it continued, that Dr. Killdare's friends would have been loath to come to his home had it been run down or untidy; and that, it pointed out, would have tended to impede the flow of playing cards across state lines. (It had been stipulated that the cards customarily used by Dr. Killdare were manufactured in Chicago.) It spoke of the relaxation which the Camarillo doctors presumably gained from their occasional games of bridge at Dr. Killdare's home and inferred that this undoubtedly reacted favorably upon their patients and enhanced by that much the possibility that some of them might be restored to capacity to a sufficient extent to become normal consumers of goods, much of which would in usual course come from beyond the state line. It was truly a well-reasoned and irresistible opinion, and it concluded with this passage that has become a classic of legal literature:

> "But it is said that the effect of all of this upon interstate commerce, although manifest, is unsubstantial. While the Court cannot bring itself to agree with an appraisal which ignores so glaringly the inescapable realities of the situation, it would not advance the defendant's

cause even if it were correct. Even Willie Muggins should know that the word 'substantial' is not to be found in the commerce clause or, for that matter, within the four corners of the constitution. The doctrine of substantiality is sheer judicial invention, well meant in its time and place no doubt, but invention none the less.

"Granted that the national government may under the clause regulate not only interstate commerce but that which affects interstate commerce as well—and this is established by scores of sound and well reasoned opinions of this court—then Killdare and all the advocates of substantiality are undone.

"The barefoot, carefree lad who drops a pebble into a millpond sees only the concentric rippling of the placid water, but science teaches us that this simple even thoughtless act will reverberate through the limitless corridors of space to the end of time, shaking even the majestic stars in their predestined orbits.

"The failure to provide Willie Muggins with his just and lawful compensation will, just as certainly, have its repercussions in the factories and market places of the East, the West, the North and the South, in mines and farms and factories across the length and breadth of this great country. Its debilitating effect will be felt by generations yet unborn, a few of whom, it is reasonably safe to assume, will still live outside of California, the state in which the offense was committed."

(This series will be concluded in an early issue).

BAJI 1950 SUPPLEMENT

(Continued from page 48)

A PRACTICAL ACHIEVEMENT

BAJI project since its inception. Out of that experience, I feel qualified to present a preview of the 1950 Supplement to

Although no effort ever has been made to sell "California Jury Instructions" in other states, and although the editors, in constructing the work, gave thought only to serving lawyers and judges in California, the book has been sold in a majority of the states, and has been used in many states for its patterns and style, even if not correctly stating the law of such jurisdictions. All royalties in the works were irrevocably

assigned to Los Angeles County which, at this writing, has received royalties in books, supplies and cash amounting in value to more than $13,000.00. This item, however, is only a small fraction of the total benefits received by judges and lawyers throughout the state, reflected in the saving of time. In Los Angeles County, many of the instructions, those most commonly used, are printed in loose-sheet form for use of judge and counsel in actual trial. This practice results in a tremendous saving of time and expense for lawyers and county. The District Attorney's office, the Public Defender's office, and certain of the Municipal Courts are provided with many of the forms. One of the ablest judges of the Los Angeles Superior Court has stated that the court's regime in relation to jury instructions results in his having 30 per cent more time to apply to other duties than he would have under conditions such as those that prevailed before the projects were completed. The Los Angeles County Law Library must keep eight copies of the civil book to meet the demand for it, and each copy is under the library's strictest rules for borrowing—a two-day limit with no renewal.

THE 1950 SUPPLEMENT

Federal Employers' Liability Act: In the 1950 Supplement to BAJI, which will be a separate volume, you will find the first organized assembly of critically edited instructions on the Federal Employers' Liability Act to come into existence. It has been my privilege to work with Judge Palmer as he quietly has directed this project through several years. He has pitted lawyers who usually represent plaintiffs against lawyers who usually represent employers, and out of the mass of material submitted, he has directed the creation of an orderly, soundly worded, well authenticated set of instructions that will be, I am sure, of incalculable value to the profession.

Survival of Tort Actions: In its 1949 session, the California Legislature enacted laws providing for the survival of causes of actions founded in tort and for damages for personal injury. This legislation called for a new set of jury instructions, and they will be found in the 1950 Supplement to BAJI. The subject is new and it involves certain points requiring the most thoughtful and accurate workmanship.

Malpractice and Specialists: Until the decision of the Supreme Court in the case of *Sinz v. Owens,* 33 Cal. 2d. 749, uncertainty in two particulars, existed in our law on the subject of malpractice: One such point of confusion related to the locale of the physicians and surgeons whose knowledge and skill and usual methods served as the standard of comparison against which the conduct in question was to be judged. Did they have to be within the same locality or could they be in a "similar" locality? Another uncertainty existed in relation to the question of what responsibility and duty a general practitioner carried when handling a case that came within a field of specialization as practiced by specialists within the same locality. The editors welcomed the clarification of the law, and new instructions have been framed to comport with this most recent pronouncement of the Supreme Court.

Jury Voting: When a juror votes against recovery, but nine vote for recovery, what is the minority juror's rights in respect to discussing and voting on the amount of judgment, etc.? Annotations and an instruction on this subject will be helpful.

Sometimes the situation is quite complicated for the jury by reason of the fact that two or more plaintiffs and two or more defendants are pressing separate claims and defenses. Is there a way in which such a situation may be presented to the jury so as to insure an intelligent discrimination and use of verdict forms? Out of the practical experience of judges, the Supplement will present aids for use in such cases.

Non-Delegable Risks: A very comprehensive, although concise survey of law on non-delegable risks will appear in the Supplement. This has been an intriguing subject for my own office, and, from our many hours of research, we were able to supply the editor-in-chief with an extensive brief on the subject. Neither the employer of an independent contractor, nor the contractor himself in relation to a sub-contractor, nor a landlord in relation to a tenant may escape all or certain responsibilities.

Liability of Husband and Wife: In respect to the liability established by Vehicle Code, sec. 402, because of permission to use an automobile, a decisive difference exists in the legal

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effects of different types of ownership by husband and wife—whether as tenants in common or joint tenants or as owners of their community interests. These differences will be pointed out and citations given in the Supplement.

A New Principle of Law: In Summers v. Tice, 33 Cal. 2d 80, 199 P. 2d 1, the Supreme Court laid down a principle of law, new in California, that has similarity to the doctrine of *res ipsa loquitur*, but does not require all the conditions necessarily incident to that doctrine. This was a hunting case in which it was impossible to identify which hunter fired the shot that injured the plaintiff. The court placed the burden of proof on each defendant to clear himself and upheld a judgment for plaintiff. This case is discussed and a new instruction based on it is given in the manuscript.

Presumption of Due Care: The Supplement will bring the report of the "Battle of the Presumptions" up to date, reviewing all recent cases and showing that the "battle" is now a five-sided affair, with five distinct positions having been taken by the reviewing courts, throwing the law into a state of discouraging, if not hopeless, confusion, except only for the fact that the Supreme Court has shown a definite leaning toward a position that is consistent with the statutes and with the best case precedent.

Prima Facie Speed Limits: The editors present an enlightening discussion of the question, whether or not, in a civil action, an instruction informing the jury of the *prima facie* speed limits ever is appropriate, reviewing the cases. The editors undertake to suggest that, in the light of Vehicle Code, secs. 510 and 513, any instruction on *prima facie* speed limits in a civil action can serve no useful purpose and can only confuse the jury.

Pecuniary Loss Death Cases: In death cases, where the jury must determine the present pecuniary value of lost future benefits, counsel sometimes offer expert testimony on interest and annuity calculations. Because of the comment of an appellate justice that such evidence calls for a special instruction to the jury, the Supplement contains such an instruction.

The Bottle-Breaking Cases: A survey of recent cases on **res ipsa loquitur** brings that always-challenging law up to date. New instructions will appear, dealing with cases such as the

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bottle-breaking cases, where the evidence shows that the instrumentality which caused injury to plaintiff was out of the possession and control of the defendant for a period of time before the accident. These instructions will show clearly what plaintiff must prove in such case to invoke the doctrine.

Many Other Helpful Features: Among the many other questions and subjects treated, and features of, the 1950 Supplement, are the following:

It directs attention, in relation to particular instructions, of many enactments of the California Legislature at its 1949 session.

It deals with recent comment of an appellate justice on how to instruct concerning the violation of an ordinance or statute.

It discusses the question, whether or not in California, when husband sues for injury to but not death of wife, he is entitled to recover for loss of "consortium".

Does the guest law which, under California statutes, applies to vehicles on the public highway, also apply to guests in airplanes?

Another case of bad confusion in the law: Is contributory negligence a defense against wilful misconduct? May it be a defense in a guest case?

New instructions in the law of invitor and invitee.

In a recent case, the District Court of Appeal held that even in the absence of expert testimony the jury should find that a failure to use the X-ray in the diagnosis of a fracture was malpractice. This case called for a new instruction.

A number of new angles on the law pertaining to emergency vehicles.

The liability of the owner and keeper of an animal "ferae naturae".

Of considerable importance in respect to causes of action against public corporations for negligence of employees and for dangerous and defective conditions is the matter of filing claims. Recent cases on this subject are listed with guiding pertinent comment.

Even if a condition dangerous to traffic on a city street is itself beyond the confines of the city, the city, nevertheless, may have a duty to warn and protect persons on the highway against the danger.

RADIO CAMPAIGNING

(Continued from page 44)

"A legally qualified candidate" is defined by Commission Rules as a person who has announced his candidacy (a) for nomination by a convention or (b) for nomination or election in a primary, special or general election, **and** who can qualify under applicable laws for that office, **and** who (i) has qualified for a place on the ballot or (ii) is eligible to be voted on by sticker, write-in, or other method, and in the latter case, if he has either been nominated by a political party, or "makes a substantial showing that he is a bona fide candidate.[5]

A person who brings himself within the definition is entitled to "equal opportunities . . . in the use of such broadcasting station." This means that upon proper demand[6] the person is entitled to equivalent use of the facilities[7] at the same rate[8] without prejudice or disadvantage and *without censorship.*

CENSORSHIP v. DEFAMATION

The freedom from censorship accorded political candidates on radio broadcasts is written into Section 315 itself, is reiterated in the Commission's rules and is the source of much uneasiness for any broadcaster who carries political speeches. This is because the broadcaster may be required to respond in damages if the political speeches carried by his station defame third parties.[9] On the other hand, if he deletes the defamatory portions he violates the Act, runs counter to principles enunciated by the authority upon which he depends for his license to operate, and may subject himself to an action

[5]FCC Rules, Section 3.190(a).

[6]The FCC held in *Homer B. Rainey,* 3 Pike & Fischer R.R. 737, where a political candidate requested radio facilities to announce his candidacy, and not to discuss a controversial issue, that he could not obtain those facilities because he did not establish rights under Section 315. Although he might have been entitled to obtain the facilities under considerations applicable to controversial issue broadcasts, he had not asked for them on that basis. Conversely, this holding indicates a candidate may be required to state his candidacy and specify that the purpose of his request is for a political broadcast before he can perfect his rights under Section 315.

[7]This protection extends to the day and time of the broadcasts as appears from *Stephens Broadcasting Co.,* 3 Pike & Fischer R.R. 1, where the FCC in remonstrating with a candidate-licensee pointed out that the offering of time after 10:35 p.m. on a Saturday was not equivalent to the candidate-licensee's use of time between the choice 6:00 p.m. to 10:00 p.m. hours Mondays through Fridays.

[8]That candidates are not necessarily entitled to free radio time seems apparent from the wording of the statute itself and this intendment is further established by Section 3.190(c) of the Rules.

[9]See: *Sorenson v. Wood* (1932) 123 Neb. 348, 243 N.W. 82, where the Nebraska court, under the corresponding provision of the 1927 Act, held the statutory prohibition prevented the licensee from censoring the words in a political speech as to their political or partisan trend but did not give him a privilege to assist in the publication of a libel nor grant any immunity from the consequence of such action.

for damages at the suit of the politician.[10] The statement of the FCC in **Port Huron Broadcasting Co.** 4 Pike & Fischer R.R. 1, 7, which has been much discussed, reads as follows: ". . . the prohibition of Section 315 against any censorship by licensees of political speeches by candidates for public office is absolute, and no exception exists in the case of material which is either libelous or might tend to involve the station in an action for damages."

In 1949 California added Section 48.5 to the Civil Code to protect the broadcaster from the consequences of this and other embarrassing dilemmas.[11] The statute has not been tested, and, although most critics believe it is constitutional, no broadcaster is anxious to undertake proof of that point.

The risk of liability for damages, or at least of defending a lawsuit, prompts most broadcasters to require indemnification from political speakers. The broadcaster's right to secure indemnification (if required of all candidates) is unquestioned, and his desire to secure it has been explained by considerations just discussed. Indemnity is particularly important to network broadcasters whose transmissions may be heard in states which have no legislation similar to Section 48.5.

IMPROPER LANGUAGE

The question of improper language is relatively simple to resolve. The Communications Act itself formerly carried a prohibition against the use of such language. That prohibition is now contained in the Federal Criminal Code.[12] In so far as obscene, indecent or profane language is concerned therefore, the broadcaster not only can but should delete it from political talks.

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[10]See: *Weiss v. Los Angeles Broadcasting Co., Inc.* (C.C.A. 9, 1947) 163 F2d 313, noted in 21 So. Cal. L.R. 292, where a federal court dismissed the complaint of a candidate for mayor of Los Angeles against the licensee of station KFAC on technical grounds, but indicated that a suit for damages would lie by a candidate against a broadcaster for censoring a political broadcast.

[11]Civil Code, Section 48.5, reads in pertinent part as follows:

"In no event, however, shall any owner, licensee or operator or such station or network of stations, or the agents or employees thereof, be liable for any damages for any defamatory statement or matter published or uttered, by one other than such owner, licensee or operator, or agent or employee thereof, in or as a part of a visual or sound radio broadcast by or on behalf of any candidate for public office, which broadcast cannot be censored by reason of the provisions of federal statute or regulation of the Federal Communications Commission."

[12]18 U.S.C., Section 1464 (formerly Section 326 of The Federal Communications Act) provides:

"Broadcasting Obscene Language.

"Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years or both."

As a practical matter, neither defamation nor unsavory language should be (although defamation in fact is) a serious problem. In the first place, broadcasters have experienced personnel whose advice regarding text and presentation should be followed by even a seasoned campaigner in order to harvest the biggest possible crop of listener votes. Those persons—"continuity acceptance editors", "program directors", "announcers", or whatever their titles may be—can be relied upon to tactfully delete defamatory and improper remarks in most instances.

Secondly, no thinking candidate should resort to mud-slinging, mass hysteria tactics via radio or television. Those media are not designed for mob psychology techniques. On the contrary they well and truly project the speaker into the living rooms of single family groups. This is indeed "parlor politics", and the family circle is no place for loud name-callings. Dad has only to reach out and turn a knob—or have Junior do it for him—to put an end to such an unwanted intrusion. The soap box orator or the arm-waving spellbinder of a noisy crowd, even a circus barker, adopts a different tone of voice and chooses a different type of phrase when he comes into the privacy of a home and addresses a small family group. If he does not, he is guilty of bad taste and is ignorant of the most effective manner of presentation.

In addition to the above problems, a broadcaster who carries political speeches must worry about complying with the following additional requirements:

(1) He must cause appropriate announcements to be made if the broadcasts are paid for.[13]

(2) He must maintain a program log and enter therein the name and political affiliation of any candidate who speaks.[14]

(3) He must truly identify those who pay for the broadcast, and, in case it is an organization, he must record for public inspection the names of the executive officers or members thereof.[15]

(4) He must record for public inspection all requests

[13]47 U.S.C., Section 317.
[14]FCC Rules, Section 3.181.
[15]FCC Rules, Section 3.189(b), (c) and (d).

for broadcast time made by or on behalf of candidates, showing the disposition of each request and what, if any, charges were made.[16]

(5) If the broadcast is to be paid for by a national bank or a federal corporation or, in the case of elections for certain federal offices, if the broadcast is to be paid for by any corporation or labor organization he should consider whether the sponsor is violating Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Taft-Hartley Act.[17]

BROADCASTS "ON BEHALF OF"

Section 315 does not expressly require the application of the foregoing principles in cases of broadcasts *on behalf of* political candidates. On the contrary, its legislative history might indicate that its principles are **not** thus to be extended. Both the House and Senate Bills originally contained, among other things, such inhibitions, but these additional limitations were dropped, and Section 315 was finally enacted in its present form.

In practice, however, it is believed most broadcasters extend the principles of Section 315 to cover political broadcasts on behalf of candidates in the same manner that they cover political broadcasts by the candidates themselves. This would seem to be a logical application and perhaps even required by general considerations of "public interest, convenience or necessity."[18]

If this article does no more than arouse a sense of sympathy for broadcasters, whose legal problems are all too frequently misunderstood, it will have served a purpose. Los Angeles broad-

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[16]FCC Rules, Section 3.190(d).

[17]2 U.S.C. (1940 ed.) 251; Supp.V, Title 50, App., Section 1509 was by Section 304 of the Taft-Hartley Act, amended to read in part as follows:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office . . . or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . ."

This statute would probably not apply to contributions by non-federal banks or corporations or labor organizations to the campaigns of candidates for offices other than those specified even though candidates for the specified offices are on the same ballot. See: *DeMille v. American Federation of Radio Artists* (1947) 31 Cal. 2d 139. The effect of this section has been very narrowly limited by two federal decisions. See: *U.S. v. C.I.O. & Philip Murray* (1947) 337 U.S. 106, 926 ed 1849, and *U.S. v. Painters Local Union No. 481* (CCA 2d, 1949) 172 F. 2d 854.

[18]See: *Sam Morris*, 4 Pike & Fischer R.R. 885, *supra*, note 4.

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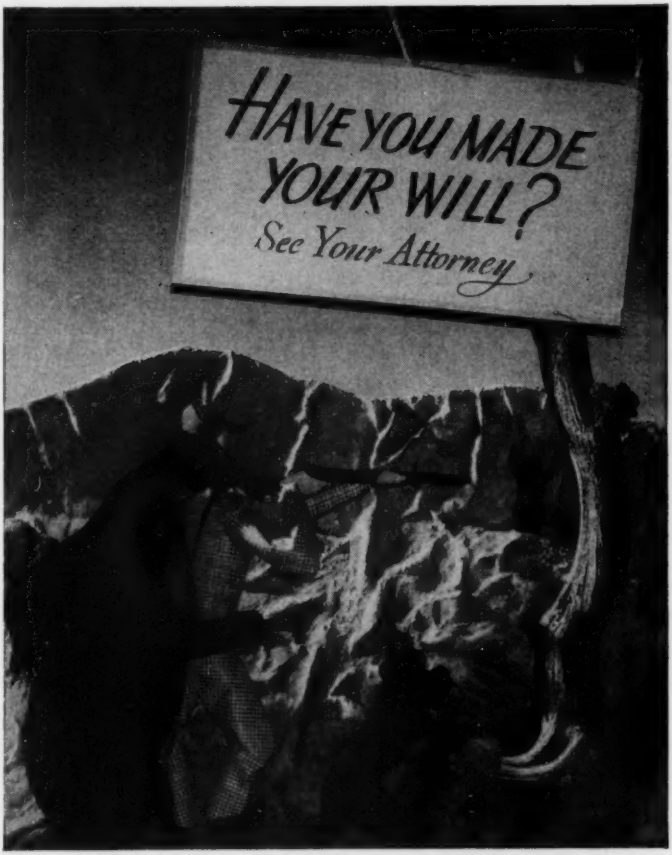

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casters hold the keys to the castles of more than a million families.[19] Their radio facilities are the drawbridges across the moats of those castles. With the help of his broadcaster, a candidate can successfully invade many of those castles and capture wanted votes.

To sum up the story: A political candidate has certain rights which he can assert with respect to campaigning by radio and television but in exercising those rights he may be best advised if he invests some trust and understanding in his broadcaster. The returns on such an investment may be in the form of decisive votes at the polls.

[19]In a recent issue of a radio and television trade magazine, 98.7% of the families in Los Angeles County (1,135,022 families) are estimated as having radios. (Broadcasting-Telecasting, Part II (Market-book) for August 14, 1950).

STATEMENT OF THE OWNERSHIP, MANAGEMENT, AND CIRCULATION REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, AS AMENDED BY THE ACTS OF MARCH 3, 1933, AND JULY 2, 1946 (Title 39, United States Code, Section 233)

of LOS ANGELES BAR BULLETIN, published monthly at Los Angeles, California, for October 1, 1950.

1. The names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 458 S. Spring St., Los Angeles 13, Calif.

Editor—Gordon F. Hampton, 458 S. Spring St., Los Angeles 13, Calif.

Managing Editor—None.

Business Manager—Robert M. Parker, 241 E. Fourth St., Los Angeles 13, Calif.

2. The owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual member, must be given.) Los Angeles Bar Association 458 South Spring Street, Los Angeles 13, California; Dana Latham, President, 411 West Fifth Street, Los Angeles 13, California; W. I. Gilbert, Jr., Secretary, 458 South Spring Street, Los Angeles 13, California; Frank C. Weller, Treasurer, 111 West Seventh Street, Los Angeles 14, California.

3. The known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) NONE.

4. Paragraphs 2 and 3 include, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner.

5. The average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above was: (This information is required from daily, weekly, semiweekly, and triweekly newspapers only.)

ROBERT M. PARKER,
Business Manager.

Sworn to and subscribed before me this 1st day of October, 1950.

[Seal]

MARGUERITE F. CRIPPS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires January 3, 1952.